

U.S. Department of Housing and Urban Development

COMMUNITY PLANNING AND DEVELOPMENT

Special Attention of:

All CPD Division Directors
All CPD Office Directors
All CDBG Entitlement and State Grantees
All CPD Field Offices
All FHEO Field Offices

Notice: CPD-05-03

Issued: June 6, 2005
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Subject: Implementing the New Freedom Initiative and Involving Persons with Disabilities in the Preparation of the Consolidated Plan through Citizen Participation

I. Purpose

The purpose of this notice is to inform Community Development Block Grant (CDBG) Entitlement and State grantees of the U.S. Supreme Court decision in Olmstead v. L.C., the New Freedom Initiative, and Executive Order 13217. This notice provides direction concerning the manner in which jurisdictions may incorporate the objectives of the New Freedom Initiative in identifying the needs of persons with disabilities and targeting CDBG resources to meet those needs during the development of the jurisdictions' consolidated plans. It also provides guidance on how to involve persons with disabilities and organizations representing persons with disabilities in the citizen participation process for the consolidated plan.

II. Background

The Olmstead Decision refers to the June 1999 Supreme Court ruling in Olmstead v. L.C., 527 U.S. 581 (1999), where the Court found that, under certain circumstances, the Americans with Disabilities Act (ADA) requires states to provide community-based treatment for persons with disabilities. The decision provided that Title II of the ADA requires states to place, whenever possible, qualified individuals with mental disabilities in community settings rather than in institutions. Further, states were encouraged to develop "comprehensive, effective working plans" aimed at providing services to individuals with disabilities in the most integrated settings possible. Executive Order 13217 and the New Freedom Initiative, both briefly described below, also promote community-based initiatives for individuals with disabilities.

New Freedom Initiative - President George W. Bush announced the New Freedom Initiative on February 1, 2001, as a means to promote full access to community life via the implementation of the Olmstead Decision. This initiative is part of the Administration's efforts to remove the barriers to community living

that are present in the lives of persons with disabilities. It proposes six broad objectives:

1. increase access to assistive and universally designed technologies;
2. expand educational opportunities;
3. promote homeownership;
4. integrate Americans with disabilities into the workforce;
5. expand transportation options; and,
6. promote full access to community life.

Executive Order 13217, Community-Based Alternatives for Individuals with Disabilities - This executive order, signed by President Bush on June 18, 2001, directs federal agencies to work with states to ensure compliance with the Olmstead Decision and the ADA. The executive order has a wider scope than the Olmstead Decision by targeting all persons with disabilities, rather than only those with mental disabilities. In addition, the executive order directed the Department of Housing and Urban Development, the Department of Health and Human Services, the Department of Justice, Department of Education, the Department of Labor, and the Social Security Administration to “evaluate the policies, programs, statutes and regulations of their respective agencies to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with disabilities.” The collaborative efforts are designed to ensure that HUD and the other designated agencies work together to integrate persons with disabilities into local communities.

In response to Executive Order 13217, the Office of Community Planning and Development conducted an evaluation of the CDBG program, which included a review of CDBG policies, statutes, and regulations, to determine how best to improve the availability of services for persons with disabilities. It was determined that current CDBG statutes and regulations provide jurisdictions with sufficient latitude to implement a wide variety of activities directed toward improved community facilities and services, housing, neighborhood revitalization, and economic development. However, it was noted that outreach efforts could be expanded to ensure that persons with disabilities are aware of the support that may be available to them through CDBG-assisted programs in the jurisdictions in which they reside.

III. Incorporating the New Freedom Initiative Goals into the Development of Grantees’ Consolidated Plans

The six goals of the New Freedom Initiative are consistent with the primary objective of the CDBG program, which is to develop viable urban communities by providing decent housing and a suitable living environment and to expand economic opportunities, principally for low- and moderate-income persons. Many activities designed to meet any one or more of the six goals may be assisted under the CDBG

program provided each activity meets applicable program requirements and addresses a need that is identified in the jurisdiction's consolidated plan.

The consolidated plan regulations at 24 CFR 91 require that grantees consider the needs of persons with disabilities when preparing their consolidated plans. In order for grantees to be as responsive as possible to the needs of persons with disabilities, each jurisdiction must first identify its population of persons with disabilities. To that end, data obtained from the U.S. Census is readily available on the HUD CDBG website which provides disability data that is broken down by gender and age and by race and ethnicity. The website contains information for each state broken down by block group. In addition, the block group records are coded with the name and code numbers of the state, county, place, county subdivision, and metropolitan area. The Census data and instructions for using this information are found on the websites listed below:

Data by Gender and Age:

<http://www.hud.gov/offices/cpd/systems/census/cdbgdisabled/index.cfm> and

Data by Race and Ethnicity:

<http://www.hud.gov/offices/cpd/systems/census/cdbgdisabled2/index.cfm> .

During the preparation of jurisdictions' consolidated plans, the consolidated plan regulations require jurisdictions to consult with public and private organizations that provide assisted housing, health services, and social services (24 CFR 91.100 and 91.110). These organizations include organizations serving persons with disabilities, such as independent living centers (ILCs). ILCs are community-based organizations providing services and advocacy for persons with disabilities. Grantees might find it advantageous to collaborate with these organizations, not only to ensure that they are aware of the availability of CDBG assistance in their respective jurisdictions, but also to help jurisdictions identify the social service, housing, and other needs of persons with disabilities.

Each jurisdiction must follow its citizen participation plan that sets forth the jurisdiction's policies and procedures for citizen participation (24 CFR 91.105(a) and 91.115(a)). The citizen participation plan must provide for and encourage citizens to participate in the development of the consolidated plan and annual action plan, any substantial amendments to the plan, and its annual performance report. As such, jurisdictions should take actions to encourage persons with disabilities to participate in the consolidated planning process. The citizen participation plan must require public hearings regarding the plan and performance report at times and locations convenient to the public, with accommodation for persons with disabilities. It should also describe how accommodations would be made. In addition, the citizen participation plan, consolidated plan, performance report, and annual action plan must be made available in alternative formats accessible to persons with disabilities, upon request. The citizen participation plan, consolidated plan, performance report, and annual action plan must also include information, including contact information, to advise persons with disabilities how to request an accommodation, including how to request documents in an alternate format.

HUD recommends that CDBG recipients identify the ILCs that service their local areas, and work in collaboration with these ILCs. In their goal to assist persons with disabilities achieve their maximum potential within their families and communities, ILCs work to ensure access to housing, employment, transportation, communities, recreational facilities, and health services. Working together with the ILCs will assist the CDBG recipients in implementing the goals of the New Freedom Initiative and involving persons with disabilities in the consolidated plan process through citizen participation. A directory of ILCs can be found at: www.ilru.org/html/publications/directory/index.html.

Provided below are a number of federal government websites that provide information concerning issues of interest to persons with disabilities. The sites may also provide links to other public and private advocacy groups.

- Access Board – This website provides information on accessibility guidelines and standards, technical assistance, and training on the guidelines and standards, enforcement of the accessibility standards, and links to other sites concerning persons with disabilities.
<http://www.access-board.gov>

- HUD – This website was created for people with disabilities and contains links for general information, Federal resources, HUD resources, ILCs, and fair housing laws.
<http://www.hud.gov/groups/disabilities.cfm>

HUD provides information on this website on the New Freedom Initiative with links to other participating federal agencies.

<http://www.hud.gov/offices/fheo/disabilities/eorder13217.cfm>

HUD provides answers to frequently asked questions on the housing rights of persons with disabilities and the responsibilities of housing providers and building and design professionals under Federal law.

<http://www.hud.gov/offices/fheo/disabilities/index.cfm>

This website provides information on HUD's Fair Housing Initiatives Program (FHIP) and Fair Housing Assistance Program (FHAP).

<http://www.hud.gov/offices/fheo/partners/index.cfm>

- Disability Info – This government website provides listings of most Federal Government resources available to persons with disabilities.
<http://disabilityinfo.gov>
- National Council on Disability – The National Council on Disability is an independent federal agency that makes recommendations to the President and Congress on issues affecting Americans with disabilities.
<http://www.ncd.gov>

- Rehabilitation Services Administration – This website is maintained by the Rehabilitation Services Administration, an organization of the Department of Education that oversees formula and discretionary grant programs that aid persons with disabilities in obtaining employment and living more independently through the provision of supports such as counseling, medical and psychological services, job training and other individualized services.
<http://ed.gov/about/offices/list/osers/rsa/index.html>
- U.S. Department of Justice, Americans with Disabilities Act – This website is the ADA home page and provides links to other federal agencies with ADA responsibilities and information on ADA compliance.
<http://www.usdoj.gov/crt/ada/adahom1.htm>
- The White House, New Freedom Initiative - This website provides information on the New Freedom Initiative.
<http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html>
- Fair Housing Accessibility First - This website is a HUD-funded education program that provides homebuilders and architects with information on the design and construction of housing that complies with the accessibility requirements of the Fair Housing Act.
<http://www.fairhousingfirst.org/>

IV. Examples of CDBG-assisted Activities Designed to Address the Needs of Persons with Disabilities

As previously stated, the New Freedom Initiative objectives are in harmony with the primary objective of the CDBG program. Jurisdictions may use CDBG to assist activities that address any one of the six objectives of the New Freedom Initiative, provided each assisted activity meets one of the three CDBG national objectives and other applicable program requirements and addresses a need that is identified in the jurisdiction's consolidated plan.

Because CDBG-assisted activities are initiated and developed at the local level based upon a jurisdiction's perceptions of its local needs, priorities, and benefits to the community and its residents, communities are able to shape their respective CDBG programs to help meet the needs of persons with disabilities and to remove barriers to community living. CDBG funds can be used to provide for activities that promote the ability of persons with disabilities to live in home and community-based settings. Some examples of how the CDBG program can address the needs of persons with disabilities are:

- Assistance to support homeownership for persons with disabilities (addresses New Freedom Initiative objectives to promote homeownership and promote full access to community life);

- Public services to expand transportation options for persons with disabilities (addresses New Freedom Initiative objectives to expand transportation options and promote full access to community life);
- Rehabilitation of housing units to increase accessibility for persons with disabilities (addresses New Freedom Initiative objective to promote full access to community life);
- Rehabilitation of a building to be used as a center for training persons with disabilities to enable them to live independently (addresses New Freedom Initiative objectives to integrate Americans with disabilities into the workforce and promote full access to community life);
- Training persons with disabilities to enable them to qualify for jobs created by CDBG-assisted special economic development activities independently (addresses New Freedom Initiative objectives to integrate Americans with disabilities into the workforce and promote full access to community life);
- Removal of material and architectural barriers that restrict the mobility and accessibility of persons with disabilities to public facilities and improvements (addresses New Freedom Initiative objective to promote full access to community life);
- Public services concerned with education, job training, fair housing and activities of daily living¹, and access to adaptive equipment to assist persons with disabilities with accessing computers (addresses New Freedom Initiative objectives to integrate Americans with disabilities into the workforce, expand educational opportunities, increase access to assistive and universally designed technologies, and promote full access to community life);
- Assistance to make Housing Choice Voucher rental and homeownership units accessible to persons with disabilities (addresses New Freedom Initiative objectives to promote full access to community life and promote homeownership);
- Consultation with public housing agencies (PHAs) concerning the needs of persons with disabilities and providing funds to PHAs to make units accessible in compliance with the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the ADA (addresses New Freedom Initiative objective to promote full access to community life); and,

¹ Activities of daily living (ADL) refer to those skills needed in typical daily self care. Such activities can include bathing, dressing, grooming, feeding oneself, toileting, and taking medication.

- Construction of job training facilities for persons with disabilities (addresses New Freedom Initiative objectives to integrate Americans with disabilities into the workforce and promote full access to community life).

These are but a few examples of the types of CDBG activities that grantees can undertake to assist persons with disabilities to obtain full access to community life and to live therein, rather than living in institutional settings.

Also, Executive Order 13217 directs HUD and other agencies to assist states in their efforts to comply with the Olmstead Decision and the ADA. In 2000, HUD issued CPD Notice-00-10, Accessibility for Persons with Disabilities to Non-Housing Programs Funded by CDBG Funds – Section 504 of the Rehabilitation Act of 1973, the ADA and the Architectural Barriers Act. Grantees are encouraged to refer to that notice for key compliance elements for non-housing programs and facilities assisted by the CDBG program (e.g., public facilities and improvements, commercial buildings, office buildings, and other non-residential buildings). Jurisdictions should refer to CPD Notice—00-09 for key compliance elements for housing assisted under the CDBG program (e.g., new construction and rehabilitation of housing). These two notices may be beneficial in helping jurisdictions develop CDBG-assisted activities designed to meet the needs of persons with disabilities. CPD Notices 03-12 and 03-13 extended the provisions of CPD Notices 00-10 and 00-09, respectively, to December 26, 2004. CPD is planning a re-issuance or extension of these two notices.

V. Summary

The New Freedom Initiative seeks to remove the barriers to community living that are present in the lives of persons with disabilities by focusing on several broad objectives: promoting full access to community life; increasing access to assistive and universally designed technologies; expanding educational opportunities; integrating Americans with disabilities in the workforce; promoting homeownership; and expanding transportation options. These objectives are consistent with the primary objective of the CDBG program and many activities designed to meet any one of the objectives may be assisted under the CDBG program provided the activity meets applicable requirements. As jurisdictions develop their consolidated plans, it is critical that CDBG grantees work and partner with local disability advocacy groups, ILCs, and persons with disabilities to identify the needs of persons with disabilities and to determine how best to address the identified needs. Only through the involvement of persons with disabilities and organizations representing persons with disabilities will HUD and its partners be able to actively pursue the six objectives of the New Freedom Initiative.